85-1136

CLERK
Supreme Court, U.S.
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JAN 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

RAINSFORD J. WINSLOW,
Petitioner,

v.

THE MORGAN COUNTY COMMISSIONERS OF
MORGAN COUNTY, COLORADO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT STATE OF COLORADO

Rainsford J. Winslow, Pro Se
Morgan Heights, P.O. Box 250
Fort Morgan, Colorado 80701
Phone: (303) 867-6201

QUESTIONS PRESENTED

1. Did the Colorado Supreme Court err in ruling that it has authority to take away the rights of a person wanting to represent himself/herself as a Plaintiff in a Colorado Court forever? U.S. Const., Art. I, redress of grievances.

2. Did the Colorado Supreme Court err in preventing six men access to the Colorado Courts with different restrictions forever and without trial by jury? U.S. Const., Art I, Art. V, Art. VII, and Art. XIV, also Art. IX.

3. Did the Colorado Supreme Court err in stating that these six men were not deprived of access to the Courts because each of them have the privilege of hiring an attorney to carry forward their complaints? U.S. Const., Art. I, Art. V, Art XIV.

4. Did the Colorado Supreme Court err

in taking authority of preventing certain Pro Se parties from filing Plaintiff actions in Colorado Courts when parties Pro Se can file Plaintiff actions without restrictions in Federal Courts? U.S. Const., Art. I, Art. V, and Art. XIV.

5. Did the Colorado Supreme Court err in expanding the authority of restricting Pro Se Plaintiffs for alleged abuse of the system from the seven justices up to approximately 103 Colorado District Judges, which was done by OPINION dated 30 Sep 85? U.S. Const., Art I, Art. V, Art. XIV.

6. Since in previous cases, the Colorado Supreme Court has restricted six men from representing themselves forever in the Colorado Courts, without a chance of ever getting this Right back, did the Colorado Supreme Court further err in giving this same power to District Judges as provided in the instant case? U.S. Const.,

Art. I, Art. V, and Art. XIV.

Attorney General Notice

The Colorado Attorney General will be given notice as to the possible unconstitutionality of the Colorado Supreme Court decision of 30 Sep 85, which says that District Court Judges can take away the right of an alleged abusive Pro Se Plaintiff for allegedly filing frivolous and groundless lawsuits. As per Title 28 USC 2403(b), the Colorado Attorney General will be served three copies of this Petition.

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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF COLORADO

Petitioner Rainsford J. Winslow prays that a Writ of Certiorari be issued to review the ORDER of the Supreme Court of Colorado dated 30 Sep 85. This ORDER reversed the Colorado Court of Appeals. The PETITION FOR REHEARING was denied on 21 Oct 85.

OPINIONS/ORDERS BELOW

The Colorado Supreme Court OPINION reversing the Colorado Court of Appeals regarding jurisdiction to prevent a Pro Se Plaintiff from representing himself for abuse of the system was issued 30 Sep 85 (Appendix A). The Petition For Rehearing by the Colorado Supreme Court was denied on 17 Oct 85 (Appendix B).

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under Title 28 USC 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution;

First Amendment (In relevant part):

"Congress shall make no law respecting an establishment . . . to petition the government for a redress of grievances."

Fifth Amendment (In relevant part):

"No person shall be . . . deprived of life, liberty, or property without due process of law . . ."

Seventh Amendment (In relevant part):

"In suits of common law . . . the right of a trial by jury shall be preserved . . ."

Ninth Amendment (In its entirety):

"The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment (In relevant part):

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. Federal Statutes:

Titles 28 USC 1654, 28 USC 1254, 42 USC 1983, 28 USC 2403(b).

STATEMENT OF THE CASE

1. On 28 Jan 74, the Morgan County Commissioners, Morgan County, Colorado, authorized the acceptance of the Morgan Heights Second Addition of the Winslow Subdivision for filing, and it was at that point zoned for Multi-Family, a high density designation.

2. In June of 1975, slightly more than one year later, the Morgan County Commissioners "rezoned" Morgan Heights to Rural Residential, a zoning designation

with low housing density. By this action, which was approved by the Morgan County Attorney E. Ord Wells, it dropped the value of Morgan Heights property probably 75%. Rainsford J. Winslow and Winifred W. Winslow, the owners of Morgan Heights, were not notified of the hearing when the rezoning took place. In fact, it was learned later that no citizen attended this hearing.

3. In wasn't until sometime in early 1978, three years later, that the Winslows learned of this detrimental zoning change. They requested that the commissioners issue a RESOLUTION to correct the error, but County Attorney Wells would not permit the RESOLUTION.

4. In order to show the bias of County Attorney Wells, it must be pointed out that he was and is the Agent for Three Lakes, Inc., which at that point owned a

155 acre property adjoining Morgan Heights on the east. Also at this point, the The Three Lakes, Inc. property was listed for sale with Van Schaack & Co. with the general plan to make it a golf course with cluster homes sprinkled throughout the property.

5. Finally in June of 1979, the Winslows were forced to file a lawsuit against the Morgan County Commissioners, and the land was quickly rezoned back to Multi-Family.

6. On 13 Aug 80, the Morgan County Commissioners placed a NOTICE in the Fort Morgan Times indicating they planned to amend the Morgan County Zoning/Subdivision Regulations. On or about 12 Sep 80, a public hearing regarding these proposed amendments was presented to the public. On or about 25 Jan 81, the Morgan County Commissioners adopted Zoning/Subdivision

Regulations, BUT NOT what was presented to the public the previous September.

7. Winslow, a Real Estate Broker/Subdivider, filed a Pro Se lawsuit against the Morgan County Commissioners claiming the NOTICE was insufficient. The Trial Court granted Morgan County a Summary Judgment and said the Notice was sufficient. Pro Se Winslow carried this to the Colorado Court of Appeals, which affirmed the Trial Court and then to the Colorado Supreme Court and the U.S. Supreme Court, which both denied Certiorari.

8. On or about 1 Feb 82, Winslow filed another Pro Se action against the Morgan County Commissioners indicating that what was adopted on or about 25 Jan 81, did not follow what was presented to the public. About ten days later, Winslow was served a Summons for Injuntive Relief signed by County Attorney E. Ord Wells in

the name of the Morgan County Commissioners. The action asked that Winslow be prevented from representing himself Pro Se in the Morgan County District Court because of alleged frivolous and groundless lawsuits and because all of his pleadings were "voluminous."

9. Chief Judge Dean Johnson, at the hearing, did not give Winslow a chance for a jury trial, did not explain any rights to Winslow regarding what had been done. He ruled that Winslow could represent himself as a Defendant, but could not go forward as a Plaintiff, nor could he even file an affirmative relief action as a Defendant. Judge Johnson also ruled that Winslow would have to hire an attorney to continue on with his case against the Commissioners regarding the Zoning/Subdivision Regulations, which at that point were alleged to have been illegally adopted.

10. Winslow filed an Original Proceeding under C.A.R. 21 in the Colorado Supreme Court regarding the Judge Johnson Judgment, which was denied. He then filed a Pro Se appeal in the Colorado Court of Appeals, which reversed the Judgment of Judge Johnson indicating the Trial Court had no jurisdiction, and could only come from the Colorado Supreme Court.

11. All the time this was going on, Winslow did hire an attorney at a cost of $1,900 to pursue the illegal adoption of the Morgan County Zoning/Subdivision Regulations. The Trial Court granted Winslow a Summary Judgment and said that Morgan County had violated the law and that Morgan County make appropriate corrections and have another hearing. Morgan County appealed the case and Winslow, Pro Se, was successful in having the Trial Court's Summary Judgment upheld and affirmed.

12. Up until Morgan County filed the action against Winslow to prevent him from representing himself, Winslow had only three Plaintiff cases against Morgan County. He prevailed on two of them and lost the third one, which went to the U.S. Supreme Court.

13. Again, it must be pointed out that Morgan County Attorney Wells, Agent for the Three Lakes, Inc. property, was successful in selling the property. His group had paid $15,000 for the 155 acres and sold it to Robert W. Thomas for $310,000 on 15 Aug 81.

14. Winslow and his wife had been involved in a Class action lawsuit in Morgan County, which involved the County Commissioners and County Attorney Wells, who was and still is in conflict of interest in his financial involvement in the competing adjoining land, which was brought

out in Court and the press, but nobody paid any attention.

15. Morgan County, through Attorney Wells and the Denver law firm of Montgomery, Young, Little, Campbell, & McGrew, filed a Petition For Certiorari in the Colorado Supreme Court, which was granted. The single issue was: "Did the Colorado Court of Appeals err by stating only the Colorado Supreme Court had the jurisdiction over the rights of a Pro Se Plaintiff who was using a Colorado Court."

16. On 30 Sep 85, the Colorado Supreme Court ruled that the Colorado Supreme Court did not have exclusive jurisdiction and that a Colorado District Court was in a better position to observe abuse of the system by a Pro Se Plaintiff and had the right to prevent such Pro Se Plaintiff from filing any further actions forever without an attorney. Justice Jean Dubosky

said that this was not denial of a person's access to the Court system because said person could still proceed with an attorney.

ARGUMENTS

17. Had Winslow not followed through on his appeal to the Colorado Court of Appeals, he would have been stopped from representing himself in Morgan County, part of the Colorado 13th Judicial District. He had used the system as it was meant to be used on several occasions and prevailed. Once he filed an action to collect a $10,000 Promissory Note and won a Judgment and collected. Another time he filed an action against officials with the Colorado Department of Health for imposing an $18,000 fine, which he felt was improper. Thirty days after the filing of the lawsuit against the Health Department officials, all charges were dropped and Winslow

settled, which was his sole purpose in the first place.

18. Another occasion had to do with Morgan County and Winslow filed a Pro Se Plaintiff action against County officials for hampering him with regard to the Morgan Heights Third Addition, Winslow Subdivision. Winslow contended that they had been "jerked around" by the Morgan County Planning Commission and the Trial Court Judge said that this Commission was "arbitrary and capricious," and issued an Order requiring the approval of the Morgan Heights Third Addition Final Plat.

19. Had Winslow been stopped from filing Pro Se lawsuits, he wouldn't have been able to get justice and would have been ruined financially. He and his wife didn't have extra money for legal fees because of other financial obligations.

20. It is argued that the Colorado

Supreme Court has no authority to stop anybody from filing a Pro Se lawsuit as a Plaintiff. Seven justices have been doing this since 1947. Now, there are 103 District Judges who have the power to stop a Pro Se litigant from filing a Pro Se lawsuit, taking away a due process right to petition the government for redress of grievances. These are violations of the U.S. Const., Art. I, V, and XIV. This is also a violation of Title 42 USC 1983, which goes to deprivation of rights under color of law.

21. It is argued that the Colorado Supreme Court has no authority to stop anybody from representing themselves as a Pro Se Plaintiff. Now, instead of having six men deprived of this right, there are now 103 District Judges who have the right to restrict/prohibit FOREVER an undetermined number of Pro Se Plaintiffs.

22. With what has been presented, it is argued that the Morgan County Attorney and the District Judge "played games" with Winslow unfairly. It could also be argued that the County Attorney and the District Judge were "buddy-buddy." They both belong to the Morgan County Bar Association and the Fort Morgan Country Club.

23. If a Pro Se Plaintiff does file a Pro Se Plaintiff lawsuit that actually is "frivolous and groundless," it can be quickly dismissed. That's what happens in the Federal Courts. In the alternative, the Pro Se Plaintiff threatened with the loss of his rights to the Courts,should have a jury review what happened and should be automatically given a jury without having to ask for it. (In Colorado, if a person doesn't ask for a jury initially and pay a $25 fee, or if he doesn't respond to a complaint with a jury demand and pay

the $25 fee, the jury rights are waived.)

24. The insideous part about what the Supreme Court has done to Pro Se Plaintiffs is that they have forbidden these "legal victims" a chance from EVER filing a Pro Se action, no matter what their financial status may be and they have no right to be reinstated. Even a drunk driver is given a second chance, but not a Pro Se Plaintiff if his name happens to be Shotkin, Spencer, Barday, Wallace Dunlap, Harry Dunlap, or Howard. (These are the six men who have been forbidden to use the Court system on one basis or another.)

LEGAL ARGUMENTS

25. Here is the information about the five Colorado cases where men have been stopped from representing themselves as Pro Se Plaintiffs on one basis or another. The last few words are underscored because there is no consistency with what the Colo-

rado Supreme Court has done in these five cases. In Shotkin v. Kaplan, 180 P.2d 1021 (Colo. 1947), Shotkin filed numerous cases in Denver County for various reasons. He had been trained for the bar, was a businessman and filed cases in the Denver District Court, Denver County Court, U.S. District Court, U.S. Court of Appeals, and the U.S. Supreme Court. The merits of Shotkin cases are not discussed, but he was prevented from proceeding Pro Se in the cases he had filed and was forbidden to file anymore Pro Se cases FOREVER. There was no chance of him reinstating his rights to the Colorado Court system.

26. In People of The State of Colorado v. Sherron F. Spencer, 524 P.2d 1084 (Colo. 1974), Spencer had problems with his neighbors over irrigation water and filed numerous Pro Se Plaintiff lawsuits in Montezuma County. The merits of his

cases were not discussed, but he was forbidden from filing anymore Plaintiff Pro Se lawsuits unless he had an attorney, FOREVER. No chance of his rights being reinstated by Order of the Colorado Supreme Court.

27. In the Board of County Commissioners of The County of Boulder v. Donald James Barday, 594 P.2d 1057 (Colo. 1979), is a little bit different situation. Barday had problems with his ex-wife and with these marriage conflicts, he filed actions against 26 Defendants. He was prohibited from filing any further Pro Se lawsuits against his ex-wife or suits that had to do with his ex-wife. This was FOREVER, with no chance of filing an action later on the marital problem basis. He was not restricted from filing other types of Pro Se actions as a Plaintiff; just those which had to do with his marital problems.

28. In The People of The State of Colorado v. Wallace Dunlap and Perry Dunlap, 623 P.2d 408 (Colo. 1981), these brothers filed lawsuits regarding a traffic infraction against State Patrolmen, a County Judge, a Deputy District Attorney, Justice Edward C. Day, Kiowa County District Court Officials, 16 State Officials and their spouses, Governor Richard D. Lamm, the District Attorney, and two insurance companies. These men were forbidden to file anymore actions against public officials or public employees FOREVER. However, they can file Plaintiff lawsuits against anybody else.

29. The last case is The Board of County Commissioners of The County of Weld v. H. Gordon Howard, 640 P.2d 1129 (Colo. 1982), which is a case of a disbarred Colorado Attorney who is alleged to have filed numerous frivolous and groundless lawsuits.

He was prevented from filing any additional lawsuits in the State of Colorado for whatever reason, and in addition, could not file any type of action to represent himself in an administrative agency FOREVER in both cases. No way of reinstating his rights said the Colorado Supreme Court.

30. As far as Winslow can determine, these are the only five cases that have prevented somebody from representing themselves as a Pro Se plaintiff. Of course, nobody in Colorado is prevented from representing himself/herself as a Defendant, but Morgan County Officials, through County Attorney E. Ord Wells, was attempting to prevent Winslow from even raising an affirmative defense as a Defendant. Morgan County District Judge Johnson ruled that way.

31. Note the inconsistencies in these five cases. Shotkin and Spencer are pro-

hibited from using the Courts FOREVER. Barday is only prevented from filing lawsuits regarding his ex-wife FOREVER. The Dunlap brothers are only prevented from representing themselves as Plaintiffs against public officers/employees, but can sue anybody else as Pro Se Plaintiffs.

32. In none of these five cases were these fiveparties given a trial, nor were they given the privilege of having a jury look at their cases. The actions were brought against them by lawyers and the matters were decided by justices, who are lawyers.

33. It would seem that these five cases point out that there was no "equal protection of the law." There were different conditions in three of the five cases, only Shotkin and Spencer were treated the same way.

34. The Colorado High Court did not

get into the merits of these five cases, but determined them all to be"frivolous and groundless." Maybe they were frivolous, maybe they were filed for harassment, but it is conclusive that the six parties were not given a jury trial. Thus, there might have been merit with what they had done. Each of them thought so, but now they can't exercise their rights under the First Amendment going to redress of grievances. Yes, if they have the money, they could pursue justice with lawyers, but likely they don't have money to hire lawyers at what lawyers charge today.

35. What the Colorado Supreme Court has done is build in a legal means of preventing a party from being a Pro Se Plaintiff, which could literally prevent petitioning the government for redress of grievances. This is a violation of not only the U.S. Const., Art. I, but also the Colorado Const., Art. II, Section 24,

which follows in its entirety:

Section 24
Right To Assemble And Petition

> The people have the right peaceably to assemble for the common good and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

36. Here is what the Colorado Constitution has to say regarding access to the Courts:

Art. II, Section 6
Equality Of Justice

> Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and right and justice should be administered without sale, denial or delay.

37. There is no Colorado Statute which addresses the situation regarding Pro Se litigants and how they can be stoped from representing themselves if they abuse the system.

Federal Courts And Pro Se's

38. There is no Federal Statute which prevents a person from filing Pro Se law-

suits in a Federal Court. To the contrary, there is a Statute that plainly permits self representation and it follows in its entirety:

> Title 28 USC 1654
> Appearance Personally Or By Counsel
> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as the rules of such court, respectively are permitted to manage and conduct causes therein.

39. Most Pro Se Plaintiff lawsuits in Federal Courts are filed by convicts residing in Federal and State prisons. To show the leniency of Federal Courts and how they are treated, there is one classic case which should be cited. It is Harry Franklin v. The State Of Oregon, 563 Fed. Supp. 1310 (1983). This man has filed 140 cases as a Pro Se Plaintiff,and here is a summary of a few of them:

A. Franklin sues prison guards who allegedly wear clopping heels on their boots, which causes him to feel he is in a "Natsy [sic] prison camp."

Frivolous, malicious--dismissed.

B. Franklin complains that the Southern Pacific Transportation Company or the Burlington Northern Railroad Company blow their whistles as they pass the Oregon State Penitentiary in early morning hours and violates his "right to public piece [sic]." Frivolous, dismissed.

C. Franklin complains that the lack of an elevator at the prison has kept him away from church services that are held on the upper floors. Case dismissed as frivolous.

40. Each case was for anywhere from $1 million up to $100 million, but every now and then, Franklin would win a few. What happened to him? Judge James M. Burns restricted him to six Pro Se lawsuits per year, which would be on a forma pauperis basis. If he filed more than that, he would have to pay all of the fees. Judge Burns reasoned that this would make Franklin more cautious on the six cases he did file each year.

41. In further analysis of Pro Se Plaintiff cases, there is Miller v. Johnson, 541 Fed. Supp. 1155 (1982). Wihtout going into the merits of the case, Miller et al had filed numerous cases against judges and others in Idaho. (Eismann v. Miller, 619 P.2d 1145, Idaho 1980). The bottom line was that Circuit Judge MacKinnon ruled that he would not take away their right to represent themselves, but would be inclined to consider such action if the parties continued abusive lawsuits. Two U.S. Supreme Court cases back up this position stating that Pro Se parties should be given sympathetic consideration so as to advance substantial justice. Haines v. Kerner, 404 U.S. 519 (1972); Conley v. Gibson, 355 U.S. 41, (1957).

42. Another case concerns Rev. Clovis Carl Green, Jr., 669 F.2d 779 (1981). He was

in prison for the previous ten years and during this time filed between 600 and 700 complaints in Federal and State Courts. All cases were forma pauperis. Finally, Green was limited to getting permission from a U.S. District Court to take any Pro Se action he might want to file. It had to be a bona fide claim as defined by the Court. If Green didn't follow this Order, he could be in contempt of Court.

43. In not one single Federal case that Winslow was able to find, were any parties stopped cold from filing Pro Se Plaintiff lawsuits. In Franklin, Supra, Green, Supra and Miller v. Johnson, Supra, there were certain restrictions, but nobody was denied the right to use the Courts.

44. In the five Colorado cases, there was no "reprieve," nor any way of getting the rights to the Court system reinstated,

unless the party would use a lawyer, and that's where the violation comes in going to the U.S. Const. Art. I, redress of grievances; and Art. XIV going to equal protection.

45. It is also interesting to note that in the five Colorado cases (Shotkin, Spencer, Barday, Dunlap, and Howard) there was not one single Federal case cited, and had they been cited, there could have been some sort of relief to a Pro Se Plaintiff for reinstatement of his rights to use the Courts. Federal Courts are specifically open to anyone on a Pro Se basis anytime.

46. Federal Statute Title 28 USC 1654 which goes to self representation, has great affect in State Courts. In Western Life Insurance Co. v. Dan Nanney, et al., 296 Fed. Supp. 432 (Tennessee 1959) there is this citation:

> [No] provision of Tennessee law (or Colorado law) regulating the practice of law in the state courts could obstruct in any way such practice under the rules of a federal court, 28 U.S.C. § 1654. In the light of any incompatibility between Tennessee law (or Colorado law) and the aforecited federal statute, state law must yield to the federal legislation. Sperry v. Florida, 373 U.S. 379 (1963).

47. What this means is that if there is a conflict in laws between State law and Federal law, Federal law prevails. The Dubosky Opinion from the Colorado Supreme Court and previous Colorado High Court decisions, violates this self representation statute. It certainly could be argued that this one point in this Petition is sufficient to reverse what the Colorado Supreme Court did on 30 Sep 85 in this instant case.

REASON FOR CONSIDERING CERTIORARI

48. The U.S. Const. Art. I going to petitioning the government for redress of

grievances is a right everyone should have. The Colorado Supreme Court in five instances denied this right with different restrictions. Up until the instant case, only seven justices had the power to stop Pro Se Plaintiffs from filing lawsuits. Now, any Colorado District Court Judge, and there are 103 of them, can stop a Pro Se Plaintiff within the District said judge has jurisdiction. These 103 judges can take away the rights of these Pro Se Plaintiffs FOREVER, the way the Justice Dubosky Opinion reads.

49. Outside of Colorado, even in State Courts, Winslow could find no case that forbids anybody from completely being stopped from filing Pro Se lawsuits. Some Federal cases gave restrictions as in Franklin, Supra and Green, Supra.

50. Certainly, litigants are not free to abuse the system and abuse

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Defendants, but this can be stopped in other ways, as just dismissing the case.

51. Colorado seems to be the only State that has the power of restraining FOREVER a Pro Se Plaintiff at the District Court level, which could be dangerous and could jeapordize somebody's rights to use the Court system. There could be collusion between lawyers and judges in rare instances, and this should be prevented.

52. Justice Dubosky says that this does not deprive a party of access to the Courts because that party can hire a lawyer. This doesn't hold water because a litigant might be bankrupt or could be without funds to hire a lawyer.

53. There are actually three main Amendments to the United States Constitution which are at issue in this case, namely Amendment I, V, and XIV, and to a lesser degree IX. Also, if this High

Court determines that a Colorado District Court does have the power to take away the rights of a Pro Se Plaintiff, then that person should be given a jury trial on that issue--the judicial abuse issue. It shouldn't be discretionary with a Colorado District Judge.

54. There is not one single case that Winslow could find where any Court in other then Colorado, has gone this far in preventing Pro Se parties from filing lawsuits. This is the main reason why this U.S. High Court should grant certiorari.

Respectfully submitted,

Rainsford J. Winslow

Opposing Counsel

William H. ReMine, III
Montgomery, Little, Young,
Campbell & McGrew, P.C.
6900 East Belleview Ave.
Englewood, CO 80111

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF MORGAN)

RAINSFORD J. WINSLOW, of lawful age, being first duly sworn upon his oath, deposes and states as follows:

That he has read the foregoing PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF COLORADO, knows the contents thereof; and that the statements therein contained are true and correct to the best of his knowledge, information, and belief.

Rainsford J. Winslow

December 19, 1985 Rainsford J. Winslow

SUBSCRIBED AND SWORN TO BEFORE ME THIS 19th day of December, 1985.

WITNESS my hand and official seal.

My commission expires August 4, 1987.

Jean K. Nielsen

Notary Public
Jean K. Nielsen
506 Deuel Street
Fort Morgan, CO 80701

(SEAL) NOTARY PUBLIC
STATE OF COLORADO
JEAN K. NIELSEN

APPENDIX A

Supreme Court, State Of Colorado

Board Of County Commissioners Of Morgan County, Colorado, Petitioner, v. Rainsford J. Winslow, Respondent. Supreme Court Case No. 83 SC 415.

Filed: September 30, 1985

Certiorari To The
Colorado Court Of Appeals

We granted certiorari to review the court of appeals' decision in Board of County Commissioners v. Winslow, 679 P.2d 1089 (Colo. App. 1983), which held that the jurisdiction to hear a request for an injunction preventing Rainsford J. Winslow from filing actions or pleadings pro se in the District Court in and for the County of Morgan lies exclusively with the state supreme court. We reverse and remand the case to the court of appeals for consideration of the remaining issues on appeal.

Since 1979, Winslow, who is not an attorney, and his wife have been litigants in several lawsuits regarding zoning and

sewer systems on a tract of land they own in Morgan County. On June 21, 1979, a class action suit was filed against Winslow and the Board of County Commissioners of Morgan County (the county) concerning "road issues" and an improvement agreement involving the Morgan Heights subdivision, which was developed by Winslow. He claims that his attorney's fees for this action were approximately $150,000 and that he began to appear pro se in this and subsequent actions to avoid financial ruin. The county prevailed on a crossclaim against Winslow for attorney's fees and costs.

The first action in which Winslow appeared a pro se plaintiff arose when Attorney Stanley Rosener allegedly hooked up to Winslow's sewer system without permission and without paying any fee. Winslow asked Morgan County District Attorney Doyle Johns, Jr.,

to file criminal charges against Rosener. When Johns failed to file charges and refused to explain his decision, Winslow filed a "Communication Demand" with the Morgan County District Court, which granted Johns' motion to dismiss for failure to state a claim upon which relief could be granted.

Winslow then filed a pro se complaint on December 1, 1980, challenging the sufficiency of the county's notice regarding particular zoning resolutions and subdivision regulations. The district court granted the county's motion for summary judgment. The court of appeals affirmed, and certiorari was denied by this court and by the United States Supreme Court.

On August 4, 1981, the county brought an action seeking Winslow's compliance with a county zoning regulation that requires a Special Use Permit for any sewer

system modification. Winslow responded by filing a pro se action to stop the county's "harassment." He claimed that only one other sewer system was required to obtain such a permit and that the numerous remaining systems were not required to obtain permits. These actions were consolidated, and the district court ordered Winslow to obtain the permit and to pay court costs.

On February 10, 1982, Winslow filed a pro se action (No. 82CV20) alleging that certain county zoning and subdivision regulations are void because of procedural defects. While this action was pending, the county filed a petition seeking to enjoin Winslow from prosecuting the action pro se and from further pro se appearances in the Thirteenth Judicial District. At the ensuing hearing, the Clerk of the Morgan County District Court identified Register of Action sheets for each of the

actions involving Winslow and testified that Winslow's case files were more voluminous and contained longer pleadings than similar case files.

The district court found that Winslow

> has appeared pro se before this Court on many occasions...; that his pleadings are usually extraordinarily voluminous and replete with irrelevant and immaterial matter; that the actions filed by [Winslow], except for the latest, have all been determined adversely to him; that this latest action appears to be an attempt to raise an issue which is res adjudicata by reason of the Court's judgment in one of [Winslow's] prior suits; that [Winslow's] actions and methods of procedure impose a heavy burden on the resources of this Court.... That the unwarranted burden placed on the operation of this Court due to [Winslow's] actions and the resultant expense thereof are prejudicial to the interests of the taxpaying public; that where it is necessary to prohibit such an abuse of the judicial process within this Court, it is within the power and authority of this Court to prevent the further commission of abuse and the concomitant injury to the public rights and interests....

The court's amended injunction states;

> that [Winslow] be and he is enjoined and restrained from filing any further actions or pleadings in the District Court in and for the County of Morgan, Colorado, wherein he appears pro se and seeks affirmative relief, as contrasted from purely defensive action, and that he be and is further enjoined from appearing pro se in Civil Action No. 82CV20 in said Court and that he arrange for the appearance of duly licensed legal counsel in said action.

After Winslow retained counsel, the court granted summary judgment against the county on the basis that the county improperly adopted the zoning regulations at issue.

Winslow appealed the district court's injunctive ruling on several grounds. The court of appeals did not address Winslow's substantive bases for appealing the district court's injunction. Instead, the court held that only the Supreme Court of Colorado may enjoin a litigant from further pro se appearances. The county petitioned for a writ of certiorari on the

issue of whether the district court had jurisdiction to enter the injunction. Winslow petitioned for certiorari on the substantive issues he raised before the court of appeals.[1] We granted certiorari on the limited question of whether a district court may issue an injunction against a litigant proceeding pro se in that district court.

On a number of occasions this court has enjoined parties from appearing pro se in all courts of the state. Board of County Comm'rs v. Howard, 640 P.2d 1128 (Colo. 1982); People v. Dunlap, 623 P.2d 408 (Colo. 1981); Board of County Comm'rs v. Barday, 197 Colo. 519, 594 P.2d 1057 (1979); People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974); Shotkin v. Kaplan, 116 Colo. 295, 180 P.2d 1021 (1947). The common thread running through these opin-

ions is that a litigant's right of access to the courts must be balanced against and, in a proper case, must yield to the interests of other litigants and of the public in general in protecting judicial resources from the deleterious impact of repetitious, baseless pro se litigation.

This court has exercised discretion in determining whether to issue an injunction prohibiting all pro se appearances as plaintiff or to limit the injunction to pro se appearances in cases on a given subject matter. See, e.g., Barday, 197 Colo. at 521, 594 P.2d at 1058 (injunction limited to lawsuits arising out of respondent's marital problems). Several concerns motivated the issuance of an injunction in each case: preventing abuse of the judicial process, refusing to allow the judicial process to be used to harass others, and conserving limited judicial

resources. See Dunlap, 623 P.2d at 410; Barday, 197 Colo. at 522, 594 P.2d at 1059; Spencer, 185 Colo. at 381, 524 P.2d at 1086.

An injunction may be necessary to prevent further abuse of judicial resources by a pro se litigant because a party acting in his own behalf is not subject to the disciplinary procedures that prevent abuse of the system by attorneys. Shotkin, 116 Colo. at 298, 180 P.2d at 1022. Forbidding a party from filing cases pro se does not infringe upon his constitutional right of access to the courts because he may still obtain access to judicial relief by employing an attorney authorized to practice in the State of Colorado. Barday, 197 Colo. at 522, 594 P.2d at 1059.

In Barday, 197 Colo. at 521, 594 P.2d at 1058-59, we identified the source of our power to issue state-wide injunctions prohibiting pro se appearances as Article

VI, section 2(1) of the Colorado Constitution, which vests this court with "general superintending control over all inferior courts." In Shotkin, where the order prohibiting pro se appearance was issued in the context of an appeal, we indicated in dicta that trial courts also might be concerned about the conservation of judicial resources and therfore might withhold access to a pro se plaintiff who has abused the judicial process. 116 Colo. at 298, 180 P.2d at 1022. We do not see any reason why a district court should not have jurisdiction to prevent an abuse of judicial process by a pro se litigant in the courts of any county in the district. The district court is in the best position to evaluate disruption of its judicial processes, and it has the inherent power to control the conduct of litigants appearing before it. As long as the power to

enjoin pro se appearances does not extend beyond the boundaries of judicial district, there is no danger that an injunction will control the course of proceedings in another judicial district or that a district court will usurp the supervisory duties of this court. We now make explicit the suggestion in Shotkin: a district court, as a court of equity and general jurisdiction, may enjoin a litigant from filing suits pro se within any county in the district upon a finding of a serious abuse of judicial process. Our holding is consistent with the law in other jurisdictions in which a trial court may enjoin a party from filing new pleadings or lawsuits pro se. See, e.g., Pittam v. Maynard, 103 Idaho 177, 646 P.2d 419 (1982); Eddy ex rel. Pfeifer v. Christian Science Board of Directors, 62 Ill. App. 3d 918, 19 Ill. Dec. 781, 379 N.E.2d 653 (1978); Roy v.

Manchester Gas Co., 113 N.H. 140, 302 A. 2d 825, cert. denied, 412 U.S. 942 (1973); Muka v. Hancock, Estabrook, Ryan, Shove & Hust, 120 Misc. 2d 146, 465 N.Y.S.2d 416 (Sup. Ct. 1983); Whatcom County v. Kane, 31 Wash. App. 250, 640 P.2d 1075 (1981).

In determining whether to issue an injunction, the court should consider the seriousness of the abuses in light of our previous cases enjoining pro se appearances. Cf. Whatcom County, 640 P.2d at 1077. We reverse the court of appeals and remand for consideration of the issues raised by Winslow on appeal, including the question of whether the district court abused its discretion in entering the injunction against him.

Judgment reversed and case remanded.

1. Those issues include whether the evidence supported the issuance of an injunction, whether the scope of the injunction was too broad, whether Winslow should have been advised by

the district court of his right to a jury trial, and whether the district court erred in prohibiting Winslow from examining the county's attorney during the hearing on Winslow's motion for a new trial.

EN BANC

JUSTICE DUBOFSKY delivered the Opinion of the Court.

APPENDIX B

Supreme Court, State Of Colorado

Board Of County Commissioners Of Morgan County, Colorado, Petitioner, vs. Rainsford J. Winslow, Respondent. Supreme Ct. No. 83SC415.

Filed: October 21, 1985

Order Of Court

Upon consideration of the Petition for Rehearing filed by the Respondent in the above cause, and now being sufficiently advised in the premises.

IT IS THIS DAY ORDERED that said Petition for Rehearing shall be, and the same is, denied.

BY THE COURT EN BANC, OCTOBER 21, 1985.

APPENDIX C

Colorado Court Of Appeals

The Board Of County Commissioners of Morgan County, Colorado, Petitioners-Appellees, v. Rainsford J. Winslow, Respondent-Appellant. Co. Ct. Appeals No. 82CA0417.

Filed: August 25, 1983

Judgment Reversed

Rainsford Winslow appeals the trial court's injunction which prevents him from "filing as plaintiff any further actions in the District Court . . . wherein he appears pro se . . . ." We reverse the judgment of the trial court granting the permanent injunction because we hold that sole jurisdiction relative to this issue is vested in the Colorado Supreme Court.

Our Supreme Court's power to issue injunctions against pro se plaintiffs derives from and "is based upon Article VI, Section 2(1) of the Colorado Constitution which vests [the Supreme Court] with general superintending power over all inferi-

or state courts." Board of County Commissioners v. Barday, 197 Colo. 519, 594 P.2d 1057 (1979). The authority to hear matters dealing with injunctions against abuse of the judicial process by a pro se litigant rests exclusively with the Supreme Court. See, e.g., Board of County Commissioners v. Howard, 640 P.2d 1128 (Colo. 1982); People v. Dunlap, 623 P.2d 408 (Colo. 1981); Board of County Commissioners v. Barday, supra. Thus, we conclude that the trial court was without jurisdiction to issue the injunction

Judgment reversed.

Opinion by JUDGE BERMAN

JUDGE SMITH and JUDGE VAN CISE, concur.

APPENDIX D

District Court Of Morgan County, Colorado

The Board Of County Commissioners Of Morgan County, Colorado, Petitioners, vs. Rainsford J. Winslow, Respondent. Tr. Ct. No. 82 CV 21.

Filed: March 3, 1982

Judgment

This matter having come on for hearing on February 25, 1982 on Petitioners' "Petition for Injunctive Relief" and Respondent's Petition and Response and the evidence offered in support of said Petition and the arguments of the parties, and having taken the matter under advisement to examine the pertinent records and files of this Court and the authorities cited by the Petitioner, and now being fully advised, FINDS:

1. That the Respondent, who is not licensed to practice law in this State nor trained in the law, has appeared pro se before this Court on many occasions and has filed several actions as plaintiff, all except one being against the Petitioners as defendants; that his pleadings are usually extraordinarily voluminous and

replete with irrelevant and immaterial matter; that the actions filed by Respondent except for the latest, have all been determined adversely to him; that this latest action appears to be an attempt to raise an issue which is res adjudicata by reason of the Court's judgment in one of Respondent's prior suits; that Respondent's actions and methods of procedure impose a heavey burden on the resources of this Court.

2. That Respondent's Response in this matter, which exemplifies his inclination to voluminosity and irrelevance, demonstrates a misunderstanding of the true issue of this proceeding and fails to show cause why the prayer of the petition should not be granted to the full extent possible.

3. That the unwarranted burden placed on the operation of this Court due to Respondent's actions and the resultant

expense thereof are prejudicial to the interests of the taxpaying public; that where it is necessary to prohibit such an abuse of the judicial process within this Court, it is within the power and authority of this Court to prevent the further commission of the abuse and the concomitant injury to public rights and interests; that insofar as this Court is empowered to act, the granting of the requested injunction is justified and appropriate; that this Court cannot enjoin the Respondent from appearing pro se to defend himself in actions against him without violating his constitutional rights and is limited to prohibiting him from filing further pro se actions as plaintiff or from proceeding pro se with litigation already filed by him.

IT IS THEREFORE ORDERED, ADJUDGED AND

DECREED that the Respondent be and he is enjoined and restrained from filing as plaintiff any further actions in the District Court in and for Morgan County, Colorado, wherein he appears pro se and from further appearing pro se in Civil Action No. 82 CV 20 in said Court and that he arrange for the appearance of duly licensed legal counsel in said action.

DONE this 3rd day of March, 1982.

BY THE COURT:

DEAN JOHNSON
District Judge

APPENDIX E

District Court Of Morgan County, Colorado

The Board Of County Commissioners Of Morgan County, Colorado, Petitioners, vs. Rainsford J. Winslow, Respondent. Tr. Ct. No. 82 CV 21.

Filed: April 2, 1982

Order

This matter having come on for hearing on Petitioner's Motion to Alter or Amend

Judgment, and the Court, having considered said motion, FINDS that said motion is well taken and that the judgment in this case should be amended for the reason set forth in Petitioner's motion.

IT IS THEREFORE ORDERED that the judgment of March 3, 1982 be amended to read as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent be and he is enjoined and restrained from filing any further actions or pleadings in the District Court in and for the County of Morgan Colorado, wherein he appears pro se and seeks affirmative relief, as contrasted from purely defensive action, and that he be and is further enjoined from appearing pro se in Civil Action No. 82 CV 20 in said Court and that he arrange for the appearance of duly licensed legal counsel in said action."

DONE THIS 2nd day of April, 1982.

BY THE COURT:

DEAN JOHNSON
District Judge

Supreme Court, U.S.
FILED
JAN 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

Case No. 85-1136
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

RAINSFORD J. WINSLOW,

Petitioner,

v.

THE MORGAN COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado, Case No. 83 SC 415

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

MONTGOMERY LITTLE YOUNG
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ATTORNEYS FOR RESPONDENT

ISSUE

In the state court system, does jurisdiction to hear a request for an injunction preventing further abuse of the judicial process by a *pro se* litigant lie exclusively with the Colorado Supreme Court?

PARTIES

The Petition for Writ of Certiorari misidentifies Respondent as "The Morgan County Commissioners of Morgan County, Colorado." The parties to the proceeding in the Colorado Supreme Court were:

Board of County Commissioners of Morgan County, Colorado,

Petitioner,

v.

Rainsford J. Winslow,

Respondent.

The Board of County Commissioners of Morgan County, Colorado is hereinafter referred to as the "Board" or "Respondent."

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People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974) ... 6

Constitutional Provisions

Colo. Const., Art. VI, § 2 1

JURISDICTION

Contrary to Petitioner's assertion, the jurisdiction of this Court is not properly invoked pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISION

The Colorado Supreme Court decision which underlies this Petition for Writ of Certiorari interprets Article VI,§ 2(1) of the Colorado Constitution:

> **Section 2. Appellate Jurisdiction.** (1) The supreme court, ... shall have general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

RESPONDENT'S STATEMENT OF THE CASE

Contrary to the suggestion which is implicit in Petitioner's Statement of the Case, the Colorado Supreme Court has not yet ruled upon the merits in this case. The facts relevant to this Petition for Writ of Certiorari are as follows:

1. Rainsford J. Winslow ("Winslow" or "Petitioner") filed a series of repetitious and baseless civil claims against the Board on various grounds which are not pertinent to the pending Petition for Writ of Certiorari.

2. The Board filed a Petition for Injunctive Relief in the District Court for Morgan County, Colorado ("Morgan County District Court") seeking to enjoin Winslow from continuing to represent himself in the action which was then pending against the Board and in further *pro se* claims he might file against the Board.

3. After trial, the Morgan County District Court enjoined Winslow from filing further actions or pleadings in the Morgan County District Court as a *pro se* plaintiff. In support of its ruling, the Morgan County District Court found that Winslow:

> has appeared *pro se* before this Court on many occasions ... ; that his pleadings are usually extraordinarily voluminous and replete with irrelevant and immaterial matter; that the actions filed by (Winslow), except for the latest, have all been determined adversely to him; that this latest action appears to be an attempt to raise an issue which is res adjudicata by reason of the Court's judgment in one of (Winslow's) prior suits; that (Winslow's) actions and methods of procedure impose a heavy burden on the resources of this Court .... That the unwarranted burden placed on the operation of this Court due to (Winslow's) actions and the resultant expense thereof are prejudical to the interests of the taxpaying public; that where it is necessary to prohibit such an abuse of the judicial process within this Court, it is within the power and authority of this Court to prevent the further commission of the abuse and the concomitant injury to public rights and interests ....

4. Winslow appealed the Morgan County District Court's injunctive order to the Colorado Court of Appeals ("State Court of Appeals").

5. On its own motion, the State Court of Appeals raised the issue of jurisdiction and held that, under Article VI, § 2(1) of the Colorado Constitution, only the Colorado Supreme Court had jurisdiction to enjoin *pro se* appearances by litigants. On this limited ground, the Morgan County District Court was reversed by the State Court of Appeals.

6. In response to the decision of the State Court of Appeals, the Board filed a Petition for Certiorari in the Colorado Supreme Court, which was granted. The only issue before the Colorado Supreme Court was whether, in the Colorado Court system, jurisdiction to hear a request for an injunction preventing the filing of *pro se* actions or pleadings lies exclusively with the State Supreme Court.

7. On September 30, 1985, the Colorado Supreme Court held that Article VI, § 2 of the Colorado Constitution does not prohibit state district courts from enjoining a litigant from filing *pro se* suits upon a finding of serious abuse of the judicial process. After reversing the State Court of Appeals on this jurisdictional issue, the Colorado Supreme Court remanded the case to the lower appellate court with instructions to consider any substansive issues or findings of fact underlying Winslow's appeal from the state district court's injunctive order.

8. Thereafter, Winslow filed a Petition for Writ of Certiorari in this Court to review the September 30, 1985 judgment of the Colorado Supreme Court.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari is properly denied on the grounds that it is premature, raises no federal question and presents no other special or important reason for this Court's review.

ARGUMENT

Respondent does not address the bulk of Petitioner's argument since it is a general discussion of Petitioner's views on the purported merits of his various cases before the state trial court. As of the date Petitioner filed this Petition for Writ of Certiorari, neither the State Court of Appeals nor the Colorado Supreme Court had considered Petitioner's case on the merits. Therefore, Respondent confines this argument to the issue of state court jurisdiction, which is the only question decided by the Colorado Supreme Court on September 30, 1985.

To the degree Petitioner claims that the Colorado Supreme Court's ruling on state court jurisdiction deprives him of various federal constitutional rights, the Petition is premature and improvidently taken. While Petitioner may view the Colorado Supreme Court's jurisdictional ruling as unfavorable to him, the effect of the decision is merely to remand the case to the State Court of Appeals for consideration on the merits. If Petitioner prevails in the state appellate courts on the merits, the injunction which presently prohibits him from filing *pro se* actions in the Morgan County District Court will presumably be withdrawn by the state trial court. Under these circumstances, Petitioner's present arguments concerning the alleged depriva-

tion of his federal constitutional rights by reason of the injunction will become moot.[1]

In addition to the premature nature of this Petition, the case presents no special nor important questions which merit this Court's review. On the contrary, the Colorado Supreme Court's ruling merely corrects the lower state appellate court's misreading of an earlier state decision.

In the prior decision, the Colorado Supreme Court entered an injunction against further *pro se* representation by a plaintiff who had filed numerous groundless civil claims against his former wife. The Court identified the source of its power to issue injunctions prohibiting *pro se* appearances as Article VI, § 2 of the Colorado Constitution. *Board of County Commissioners v. Barday*, 197 Colo. 519, 521, 594 P.2d 1057, 1058-9 (1979). In the decision which is the subject of this Petition, the Colorado Supreme Court reversed the lower appellate court on the ground that it misconstrued the *Barday* decision by erroneously concluding that Article VI, § 2 of the Colorado Constitution created exclusive jurisdiction in the Colorado Supreme Court to enjoin *pro se* representation when appropriate.

The foregoing Colorado Supreme Court decision addresses no federal question. Prior to September 30, 1985, it was well established under state law that the Colorado Supreme Court could enjoin *pro se* abuses of the judicial process and these issues were generally addressed in the context of original proceedings before the State Supreme

[1] Respondent's argument concerning the premature nature of this Petition for Writ of Certiorari is not affected by the most recent decision of the Colorado Court of Appeals rendered on January 9, 1986, which denied Winslow's appeal on the merits. At the time of writing this brief, counsel is unable to predict whether Winslow will file a Petition for Rehearing in the Colorado Court of Appeals, which is a prerequisite to review by writ of certiorari in the Colorado Supreme Court.

Court. See *Board of County Commissioners v. Howard*, 640 P.2d 1128 (Colo. 1982); *People v. Dunlap*, 623 P.2d 408 (Colo. 1981); *Barday, supra*, *People v. Spencer*, 185 Colo. 377, 524 P.2d 1084 (1974). In its most recent decision, the Colorado Supreme Court merely emphasized that state district courts also have authority to prevent needless disruption of the judicial process. When an instance such as that in the Morgan County District Court occurs, the *pro se* plaintiff may litigate all federal and state constitutional issues before the trial court. In the event the litigant is dissatisfied with the trial court's ruling, he may then seek state appellate review of any constitutional issues followed by a petition for writ of certiorari to this Court. Thus, the September 30, 1985 decision of the Colorado Supreme Court has no impact on Petitioner's federal constitutional rights.

CONCLUSION

Respondent respectfully asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

MONTGOMERY LITTLE YOUNG
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By: J. Bayard Young
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(303) 779-4344
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of January, 1986, three copies of this BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI have been served upon Rainsford J. Winslow, by placing them in the United States mail, postage prepaid, properly addressed to Petitioner, *pro se* at the address shown on his Petition for Writ of Certiorari:

Rainsford J. Winslow
Morgan Heights, P.O. Box 250
Fort Morgan, Colorado 80701

J. Bayard Young

WinslowBrf (LIT) 1-13-86